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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/257,902    02/25/99    ZLOTKIN    S    VANZ-0011

HM12/1002  
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& NORRIS  
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EXAMINER

GEORGE, K

ART UNIT

PAPER NUMBER

1616

DATE MAILED:

10/02/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trad marks**

# Office Action Summary

Application No.

09/257,902

Applicant(s)

ZLOTKIN, STANLEY H.

Examiner

Konata M. George

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 7-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-22, 28, 30 and 31 is/are allowed.
- 6) ☒ Claim(s) 7-11, 23-27 and 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some \* c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☒ received.
2. ☐ received in Application No. (Series Code / Serial Number) \_\_\_\_.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 7-31 are pending in this application.

#### ***Action Summary***

1. Examiner acknowledges the cancellation of claims 1-6.
2. The rejection of claims 7-11 of record made under 35 U.S.C. 102(b) over Kovacs et al. is hereby expressly withdrawn.
3. Applicant's arguments filed June 30, 2000 have been fully considered but they are not persuasive.
4. The rejection of claims 7-20 of record made under 35 U.S.C. 103(a) over Kovacs et al. is being maintained for the reason stated in the previous action.

#### ***Response to Arguments***

5. The applicant argues that the prior art reference does not disclose the claimed invention. Applicant argues the process of making the iron granules of the prior art. It is argued that the art does not teach the claimed administration of the claimed invention. Also argued is the addition of the supplement/carrier mixture during the food manufacturing process. It is the position of the examiner that the prior art does disclose the claimed invention. The claimed invention discloses administering microencapsulated iron granules to semi-solid or pureed food and milk-based food products. The prior art teaches sprinkling the particulate material to a breakfast cereal (col. 7, lines 10-14) and although it applied to the cereal in the heated stage the claims does not exclude the cereal being heated. For example, if the user of the product was

eating a semi-solid breakfast cereal such as oatmeal and then applied the iron supplement this would fall in the scope of the prior art.

### ***Claims***

6. There is a misspelled word in claim 30. The word "manufactuer" is misspelled. Correction is needed.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claim 31 is rejected because the claimed invention is directed to non-statutory subject matter. The words "use of" are considered non-statutory class of invention.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 31 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "use of" in claim 31 is a relative term which renders the claim indefinite. The term "use of" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

***Claim Rejections - 35 USC § 103***

9. Claims 21-27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kovacs et al. (USPN 3,992,556). Claims 23-27 and 29 are rejected for the reason stated on record in prior office action.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is (703) 308-4646. The examiner can normally be reached from 8AM to 5:30PM Monday to Thursday, and on alternate Fridays.

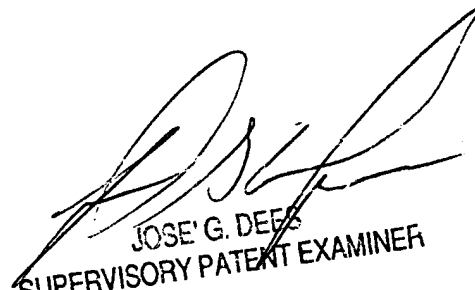
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, José Dees, can be reached at (703) 308-4628. The fax phone numbers for

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the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

KMG

  
JOSE G. DEES  
SUPERVISORY PATENT EXAMINER  
1616